

REMARKS/ARGUMENTS

Claims 1 to 24 are pending. Claims 1, 4 and 7 have been amended.

New independent Claim 24 defines enantiomeric pure as being an enantiomeric excess ee of at least 90 percent. Applicants' examples have ees in a wide range that shows the viability of the scope of such claim limitation.

The application states:

"The invention relates to a process for the preparation of enantiomerically pure (S)- or (R)-4-halo-3-hydroxybutyrates...." [page 1, lines 1 and 2]

"Here and hereinbelow the term 'enantiomerically pure compound' comprises optically active compounds with an enantiomeric excess (ee) of at least 90 %." [page 1, lines 9 and 10]

"The invention provides a process for the preparation of enantiomerically pure (S)- or (R)-4-halo-3-hydroxybutric acid esters...." [page 3, lines 5 and 6]

"To provide said hydroxybutyrates in pharmaceutically acceptable qualities and to avoid costly separation of the enantiomers the processes for asymmetric hydrogenation should result in high ee, preferably in the range of 90 to 100 %." [page 2, lines 10 to 13]

Claims 1 to 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,878,665 (US '665) in view of EP 1176135 (EP '135), (provided by applicants on IDS of April 24, 2006). Applicants traverse this rejection, for the reasons shown herein and in the prior amendment.

An Abstract Of The Disclosure has been supplied on a separate page in the Appendix.

Reconsideration, reexamination and allowance of the claims are requested.

Respectfully submitted,

November 18, 2009
Date

Virgil H. Marsh
Virgil H. Marsh
Reg. No. 23,083

Fisher, Christen & Sabol
1156 15th Street, N.W.
Suite 603
Washington, D.C. 20005
Phone: 202-659-2000
Fax: 202-659-2000

<p align="center"><u>CERTIFICATE OF MAILING</u></p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on <u>November 18, 2009</u>.</p> <p align="center"><u>Virgil H. Marsh</u> FISHER, CHRISTEN & SABOL 1156 15th Street, N.W. Suite 603 Washington, D.C. 20005</p>

APPENDIX